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*A Debt Relief Agency Making A
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We Help People File For Bankruptcy
Relief Under The Bankruptcy Code

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:	)	Case No. 1:22-bk-10695-VK
	)	Chapter 7
Ari David Alexenburg,	)	Adv. No. 1:22-ap-01049-VK
)	
Debtor,	)	MOTION BY DEFENDANT ARI
	)	DAVID ALEXENBURG FOR ORDER
	)	DISMISSING COMPLAINT BY
Daphne Yadegar,	)	PLAINTIFF DAPHNE YADEGAR,
	)	WITHOUT LEAVE TO AMEND, FOR
Plaintiff,	)	FAILURE TO STATE A CLAIM
	)	FOR RELIEF PURSUANT TO
v.	)	FEDERAL RULE OF BANKRUPTCY
	)	PROCEDURE 7012(b)(6) ;
Ari David Alexenburg,)	
	)	MEMORANDUM OF POINTS AND
Defendant.	)	AUTHORITIES;
)	
	)	DECLARATION OF DEFENDANT
	)	ARI DAVID ALEXENBURG
)	
	)	Date: To Be Assigned
	)	Time: To Be Assigned
	)	Courtroom: 301 by Zoom.gov

To: The Honorable Victoria S. Kaufman, United States
Bankruptcy Judge And Plaintiff Daphne Yadegar And Her Attorneys,
Law Offices Of Eric Bryan Seuthe & Associates:

1 Defendant Ari David Alexenburg hereby moves this Court For An
2 Order Dismissing Complaint By Plaintiff Daphne Yadegar, Filed
3 09/22/2022, Docket Number 5, Without Leave To Amend, For Failure To
4 State A Claim For Relief Pursuant To Federal Rule Of Bankruptcy
5 Procedure 7012(b)(6).

6 **PLEASE TAKE FURTHER NOTICE** that this Motion is being brought
7 pursuant to Federal Rule Of Civil Procedure 12(b)(6) as made
8 applicable in bankruptcy contexts pursuant to Federal Rules Of
9 Bankruptcy Procedure 7012(b)(6) and is based upon the accompanying
10 Memorandum Of Points And Authorities, the Court's files, records in
11 this Adversary Proceeding, the main bankruptcy case, and such other
12 evidence and arguments as may properly come before this Court.
13 Federal Rule Of Civil Procedure 12, 'Defenses and Objections: When
14 and How Presented; Motion for Judgment on the Pleadings;
15 Consolidating Motions; Waiving Defenses; Pretrial Hearing,' states:

16 (B) How to Present Defenses. Every defense to a claim
17 for relief in any pleading must be asserted in the
18 responsive pleading if one is required. But a party may
19 assert the following defenses by motion:

20 (1) lack of subject-matter jurisdiction;

21 (2) lack of personal jurisdiction;

22 (3) improper venue;

23 (4) insufficient process;

24 (5) insufficient service of process;

25 (6) failure to state a claim upon which relief
26 can be granted; and

27 (7) failure to join a party under Rule 19.

28 A motion asserting any of these defenses must be made
before pleading if a responsive pleading is allowed. If
a pleading sets out a claim for relief that does not

1 require a responsive pleading, an opposing party may
2 assert at trial any defense to that claim. No defense or
3 objection is waived by joining it with one or more other
defenses or objections in a responsive pleading or in a
motion.

4 F.R.Civ.P. 12(b) (6) .

5 Federal Rule Of Bankruptcy Procedure 7012, 'Defenses and
6 Objections,' subsection (b), 'Applicability of Rule 12(b)-(i)'
7 states:

8 Rule 12-(b)-(I) F.R.Civ.P. applies in adversary
9 proceedings. A responsive pleading shall include a
statement that the party does or does not consent to entry
of final orders or judgment by the bankruptcy court.

10 F.R.B.P. 12(b) .

11 Defendant Ari David Alexenburg consents to entry of a final
12 order or judgment by this Bankruptcy Court.

13 **PLEASE TAKE FURTHER NOTICE** that the hearing on this matter is
14 set for _____ (to be assigned by Court) by Zoom.gov.

15 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy
16 Rule 9013-1(a)(7), any opposition to the relief sought in this
17 Motion must be in writing pursuant to Local Bankruptcy Rule 9013-
18 1(f), filed with the Court and served on Defendant Ari David
19 Alexenburg's counsel no less than fourteen days prior to the
20 hearing date. Failure to timely file and serve an opposition may
21 be deemed by the Court consent to granting of the requested in the
22 Motion.

23 ///

24 ///

25 ///

26 ///

I

FACTUAL BACKGROUND

1. On 02/28/2020 Plaintiff Yadegar was a passenger in a 2006 BMW 525i vehicle traveling northbound on the 405 Interstate north of Nordhoff Street.

2. Also on 02/28/2020, Defendant Ari David Alexenburg, then-age 40, was the driver of another vehicle, a 2009 Toyota Camry, that was also traveling northbound on the 405 Interstate north of Nordhoff Street.

3. The 2009 Toyota Camry vehicle that Defendant Ari David Alexenburg was driving was registered to and owned by his mother, Rochelle Alexenburg.

4. Defendant Ari David Alexenburg's 2009 Toyota Camry vehicle accidentally rear-ended the 2006 BMW 525i vehicle in which Plaintiff Yadegar was a passenger. The 2006 BMW 525i then proceeded to rear-end a truck that was in front of the 2006 BMW 525i vehicle.

5. Defendant Ari David Alexenburg was not under the influence of drugs or alcohol at the time of the accident, nor have there been any allegations or insinuations that he was.

6. Although Defendant Ari David Alexenburg had been licensed to drive in the state of New York when he turned 18 years of age in 1997 and until his license expired in 2015, he did not have a current driver's license at the time of the 02/28/2020 automobile accident.

///

1 7. Although Defendant Ari David Alexenburg and was not
2 covered by Rochelle Alexenburg's automobile insurance policy,
3 neither he nor Rochelle Alexenburg realized that Defendant Ari
4 David Alexenburg wasn't covered under Rochelle Alexenburg's
5 automobile insurance policy until after the 02/28/2020 accident
6 when they reported the accident to her carrier.

7 8. Neither Defendant Ari David Alexenburg nor Rochelle
8 Alexenburg had ever met Plaintiff Yadegar, or for that matter the
9 driver of the 2006 BMW 525i vehicle in which Plaintiff Yadegar was
10 a passenger, or the driver of the truck, prior to 02/28/2020. Nor
11 was the accident in any way a road rage incident. The accident was
12 just that, an accident, and was purely a result of, at worst,
13 Defendant Ari David Alexenburg's negligence.

14 9. Contrary to the allegations made by Plaintiff Yadegar,
15 Defendant Ari David Alexenburg did not attempt to leave the scene
16 of the accident. The driver of the truck who was hit by the 2006
17 BMW 525i vehicle came up to Defendant Ari David Alexenburg's
18 vehicle and urged him to pull the 2009 Toyota Camry over to
19 shoulder, which he did. The driver of the truck then called 911 to
20 report the accident and for an ambulance. When the ambulance
21 arrived, the paramedic felt that Defendant Ari David Alexenburg
22 needed to be transported to the hospital. After a CHP officer
23 questioned Defendant Ari David Alexenburg, the ambulance took him
24 to the hospital. No attempts by Defendant Ari David Alexenburg
25 were made to leave the scene or to avoid providing identification
26 and what he thought was current insurance information.

27 ///

1 10. Plaintiff Yadegar, represented by Law Offices Of Eric
2 Bryan Seuthe & Associates, initiated a 'Complaint For Damages:
3 Motor Vehicle Negligence' lawsuit in Los Angeles County Superior
4 Court, case number 20STCV10613, on or about 03/17/2020 against both
5 Defendant Ari David Alexenburg and Rochelle Alexenburg asserting
6 personal injuries suffered in the 02/28/2020 automobile accident.
7 A true and correct copy of Plaintiff Yadegar's Superior Court
8 lawsuit is attached as Exhibit 1.

9 11. Although Plaintiff Yadegar's Superior Court lawsuit
10 describes Defendant Ari David Alexenburg as having driven
11 negligently, recklessly and carelessly and describes Rochelle
12 Alexenburg as having negligently entrusted, managed, and maintained
13 the 2009 Toyota Camry vehicle, nothing in the Superior Court
14 lawsuit alleges willful and/or malicious conduct on the part of
15 either Defendant Ari David Alexenburg or Rochelle Alexenburg.

16 12. Defendant Ari David Alexenburg filed a Chapter 7
17 voluntary bankruptcy case in the Central District Of California's
18 San Fernando Valley Division on 06/11/2022.

19 13. It should be noted that Rochelle Alexenburg also filed a
20 Chapter 7 bankruptcy case in the Central District Of California's
21 San Fernando Valley Division 06/11/2022. Case number 1:22-bk-
22 10694-VK was assigned.

23 14. The Yadegar v. Alexenburg Superior Court lawsuit was
24 still pending at the time that both Defendant Ari David Alexenburg
25 and Rochelle Alexenburg filed their bankruptcy cases. The Superior
26 Court lawsuit remains stayed as a result of the bankruptcy filings.

27 ///

1 15. Plaintiff Yadegar filed a timely complaint against
2 Defendant Ari David Alexenburg as well as against Rochelle
3 Alexenburg, on 09/20/2022. She then proceeded to file two amended
4 complaints, on 09/21/2022 (Docket Number 3) and a second amended
5 complaint on 09/21/2022 (Docket Number 5).

6 16. Paragraph 13 of Plaintiff Yadegar's Complaint, as
7 amended, asserts:

8 Debtor ARI DAVID ALEXENBURG acted with intent and malice
9 every moment he drove without a license, without skill
10 and knowledge of how to drive. For every second he was
11 on the road he was knowingly, willfully and intentionally
12 endangering other drivers on the road.

13 17. Paragraph 14 of Plaintiff Yadegar's Complaint, as
14 amended, asserts:

15 Additionally when Debtor ARI DAVID ALEXENBURG attempted
16 to leave the scene without giving his information or
17 admitting his actions he did so willfully and with the
18 intent to prevent Plaintiff/Creditor from collecting for
19 ARI DAVID ALEXENBURG's wrongdoing.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **II**

22 **LEGAL STANDARD**

23 Federal Rule Of Civil Procedure 12(b)(6), made applicable in
24 bankruptcy matters by way of Federal Rule Of Bankruptcy Procedure
25 7012(b)(6), provides a mechanism to test the legal sufficiency of
26 averments in the complaint. Dismissal is appropriate when the
27 complaint "fail[s] to state a claim upon which relief can be
28 granted." A complaint must be dismissed under FRCP Rule 12(b)(6)
if it either lacks a cognizable legal theory or lacks sufficient
facts alleged under a cognizable legal theory. Balistreri v.
Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

Dismissal under Federal Rule Of Civil Procedure 12(b) is appropriate only when the complaint (1) "lacks a cognizable theory" or (2) lacks "sufficient facts to support a cognizable legal theory." Mendiondo v. Centinela Hosp. Med. Ctr. 521 F.3d 1097, 1104 (9th Cir. 2008).

To survive a motion to dismiss under FRCP 12(b)(6), a plaintiff must allege sufficient facts to raise a right to relief above the speculative level, that is, a claim for relief that is plausible on its face. Bell Atl. Corp. V. Twombly, 550 U.S. 544, 555-56 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." See, e.g., Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1140 (9th Cir. 2012) (citations omitted) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). Assessing whether a complaint "states a plausible claim for relief" is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense" and to look for "more than the mere possibility of misconduct." Iqbal, *supra*, 556 U.S. at 679.

III

PLAINTIFF YADEGAR HAS FAILED TO DEMONSTRATE A PLAUSIBLE CLAIM FOR HER RELIEF THAT DEFENDANT ARI DAVID ALEXENBURG'S OBLIGATION TO HER OUGHT TO BE NONDISCHARGEABLE PURSUANT TO 11 U.S.C. SECTION 523(a)(6).

Bankruptcy Code Section 523(a) provides that:

A discharge under § 727...does not discharge an individual debtor from any debt-

...

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. § 523(a)(6). To prevail on a claim under Section 523(a)(6), a creditor must show three elements: (1) willful conduct, (2) malice; and (3) causation. See In re Butcher, 200 B.R. 675, 680 (Bankr. C.D. Cal. 1996) (quoting In re Apte, 180 B.R. 223, 230 (9th Cir. BAP 1995); see also In re Barboza, 545 F.3d 702, 706 (9th Cir. 2008) (holding that the malicious injury requirement is separate from the willful injury requirement); Ormsby v. First American Title Company Of Nevada, 591 F.3d 1199, 1206 (9th Cir. 2010) (holding that 'willful' and 'malicious' are both required elements to establish nondischargeability under Section 523(a)(6)). A willful and malicious injury under this provision requires proof of a "deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998).

An injury is willful when "the debtor subjectively intended to cause injury to the creditor, or the debtor subjectively believed that the injury was substantially certain to occur to the creditor as a result of her actions." In re Chunchai Yu, BAP No. CC-16-1045-KuFD, 2016 WL 4261655, at *3 (9th Cir. BAP 08/11/2016); see also In re Ormsby, 591 F.3d 1199, 1207 (9th Cir. 2010) ("The [d]ebtor is charged with the knowledge of the natural consequences of his actions."); Bankers Healthcare Grp., LLC v. Moss (In re Moss), 598 B.R. 508, 518 (Bankr. N.D. Ga. 2019) ("For a failure to pay loans, the debtor must have 'acted with a specific intent to

1 cause economic injury, or knew injury was substantially certain to
2 result, from his failing to remit payment on the subject loans,'
3 for § 523(a)(6) to be indicated.") (citations omitted). If the act
4 was intentional and the debtor knew that it would necessarily cause
5 injury, 'willful' intent does not require that the debtor has had
6 the specific intent to injure the creditor. In re Jercich, 238
7 F.3d, 1202, 1207 (9th Cir. 2001). 'Willful' means 'voluntary' or
8 'intentional.' Kawaauhau, 523 U.S. at 61-62 (citations omitted).

9 An injury is malicious when it involves: (1) a wrongful act;
10 (2) done intentionally; (3) which necessarily causes injury; and
11 (4) is done without just cause or excuse. In re Barboza, 545 F.3d
12 at 706 (quoting In re Jercich, 238 F.3d at 1209). This definition
13 "does not require a showing of biblical malice, i.e., personal
14 hatred, spite, or ill will." In re Bammer, 131 F.3d 788, 791 (9th
15 Cir. 1997). The Supreme Court narrowly held that
16 "nondischargeability takes a deliberate or intentional injury, not
17 merely a deliberate or intentional act that leads to injury."
18 Kawaauhau, 523 U.S. at 61 (citations omitted).

19 Does Plaintiff Yadegar have a valid case in Los Angeles County
20 Superior Court that because Defendant Ari David Alexenburg drove
21 his vehicle negligently and caused an accident resulting in
22 Plaintiff Yadegar suffering personal injuries, Defendant Ari David
23 Alexenburg ought to be liable for those damages? Presumably yes.
24 But has Plaintiff Yadegar plead any facts in either the Los Angeles
25 County Superior Court or here in this bankruptcy adversary
26 proceeding that would suggest that such liability ought to survive
27 ///

1 Defendant Ari David Alexenburg's Chapter 7 bankruptcy? No, not
2 even close.

3 There was no willfulness on the part of Defendant Ari David
4 Alexenburg. He did not 'subjectively intend to cause injury' to
5 Plaintiff Yadegar, nor did he 'subjectively believe that injury was
6 substantially certain to occur' to Plaintiff Yadegar as a result of
7 his actions. Defendant Ari David Alexenburg, who does in fact know
8 how to drive a vehicle, did not intend to cause injury to anyone,
9 nor did he believe that injury was substantially certain to occur
10 to anyone simply by driving his mother's vehicle. And allegations
11 that he attempted to leave the scene of the accident, while not
12 terribly relevant to the issue, is simply false.

13 There was no malice on the part of Defendant Ari David
14 Alexenburg. If, as the Supreme Court stated in Kawaauhau,
15 "nondischargeability takes a deliberate or intentional injury, not
16 merely a deliberate or intentional act that leads to injury," how
17 can driving a vehicle, whether licensed or not, constitute an
18 intent to cause a deliberate or intentional injury? The answer is
19 that it cannot. If Defendant Ari David Alexenburg knew Plaintiff
20 Yadegar and was attempting to use his vehicle as a weapon that
21 might be one thing, but such facts have not be alleged because such
22 facts do not exist.

23 Plaintiff Yadegar has alleged no facts that would suggest that
24 the requisite degree of willfulness and/or malice on the part of
25 Defendant Ari David Alexenburg is present in this case. Nor can
26 she, because such facts simply don't exist. It was, pure and
27 simple, a garden variety automobile accident and any resulting

liability on the part of Defendant Ari David Alexenburg should accordingly be, as a result of the 09/29/2022 Clerk's entry of Defendant Ari David Alexenburg's Chapter 7 discharge, deemed discharged.

IV

CONCLUSION

WHEREFORE, Defendant Ari David Alexenburg prays that this Court grant his Motion For An Order Dismissing Complaint, Filed 09/22/2022, Docket Number 5, By Plaintiff Daphne Yadegar, Without Leave To Amend, For Failure To State A Claim For Relief Pursuant To Federal Rule Of Bankruptcy Procedure 7012(b)(6), enter an Order accordingly, and for such other and further relief as this Court may deem just and proper.

Dated: 10/03/2022

Law Offices Of Hagen & Hagen

By: /s/ Jeffrey J Hagen
Jeffrey J Hagen
Attorneys For Defendant
Ari David Alexenburg

DECLARATION OF DEFENDANT ARI DAVID ALEXENBURG

I, Ari David Alexenburg, declare:

1. I am the Defendant herein.

2. I am personally familiar with the facts stated.

3. On 02/28/2020 Plaintiff Yadegar was a passenger in a 2006 BMW 525i vehicle traveling northbound on the 405 Interstate north of Nordhoff Street.

4. Also on 02/28/2020, I, then-age 40, was the driver of another vehicle, a 2009 Toyota Camry, that was also traveling northbound on the 405 Interstate north of Nordhoff Street.

5. The 2009 Toyota Camry vehicle that I was driving was registered to and owned by my mother, Rochelle Alexenburg.

6. My 2009 Toyota Camry vehicle accidentally rear-ended the 2006 BMW 525i vehicle in which Plaintiff Yadegar was a passenger. The 2006 BMW 525i then proceeded to rear-end a truck that was in front of the 2006 BMW 525i vehicle.

7. I was not under the influence of drugs or alcohol at the time of the accident, nor have there been any allegations or insinuations that he was.

8. Although I had been licensed to drive in the state of New York when I turned 18 years of age in 1997 and until my license expired in 2015, I did not have a current driver's license at the time of the 02/28/2020 automobile accident.

9. Although I was not covered by Rochelle Alexenburg's automobile insurance policy, neither Rochelle Alexenburg nor I realized that I wasn't covered under Rochelle Alexenburg's

///

1 automobile insurance policy until after the 02/28/2020 accident
2 when we reported the accident to her carrier.

3 10. Neither Rochelle Alexenburg nor I had ever met Plaintiff
4 Yadegar, or for that matter the driver of the 2006 BMW 525i vehicle
5 in which Plaintiff Yadegar was a passenger, or the driver of the
6 truck, prior to 02/28/2020. Nor was the accident in any way a road
7 rage incident. The accident was just that, an accident, and was
8 purely a result of, at worst, my negligence.

9 11. Contrary to the allegations made by Plaintiff Yadegar,
10 I did not attempt to leave the scene of the accident. The driver
11 of the truck who was hit by the 2006 BMW 525i vehicle came up to my
12 vehicle and urged me to pull the 2009 Toyota Camry over toe
13 shoulder, which I did. The driver of the truck then called 911 to
14 report the accident and for an ambulance. When the ambulance
15 arrived, the paramedic felt that I needed to be transported to the
16 hospital. After a CHP officer questioned me, the ambulance took me
17 to the hospital. I made no attempts to leave the scene or to avoid
18 providing identification and what I thought was current insurance
19 information.

20 12. Plaintiff Yadegar, represented by Law Offices Of Eric
21 Bryan Seuthe & Associates, initiated a 'Complaint For Damages:
22 Motor Vehicle Negligence' lawsuit in Los Angeles County Superior
23 Court, case number 20STCV10613, on or about 03/17/2020 against both
24 Rochelle Alexenburg and me asserting personal injuries suffered in
25 the 02/28/2020 automobile accident. A true and correct copy of
26 Plaintiff Yadegar's Superior Court lawsuit is attached as Exhibit
27 1.

1 13. Although Plaintiff Yadegar's Superior Court lawsuit
2 describes me as having driven negligently, recklessly and
3 carelessly and describes Rochelle Alexenburg as having negligently
4 entrusted, managed, and maintained the 2009 Toyota Camry vehicle,
5 nothing in the Superior Court lawsuit alleges willful and/or
6 malicious conduct on the part of either Rochelle Alexenburg or me.

7 14. I filed a Chapter 7 voluntary bankruptcy case in the
8 Central District Of California's San Fernando Valley Division on
9 06/11/2022.

10 15. It should be noted that Rochelle Alexenburg also filed a
11 Chapter 7 bankruptcy case in the Central District Of California's
12 San Fernando Valley Division 06/11/2022. Case number 1:22-bk-
13 10694-VK was assigned.

14 16. The Yadegar v. Alexenburg Superior Court lawsuit was
15 still pending at the time that both Rochelle Alexenburg and I filed
16 our bankruptcy cases. The Superior Court lawsuit remains stayed as
17 a result of the bankruptcy filings.

18 17. Plaintiff Yadegar filed a timely complaint against me as
19 well as against Rochelle Alexenburg, on 09/20/2022. She then
20 proceeded to file two amended complaints, on 09/21/2022 (Docket
21 Number 3) and a second amended complaint on 09/21/2022 (Docket
22 Number 5).

23 18. Paragraph 13 of Plaintiff Yadegar's Complaint, as
24 amended, asserts:

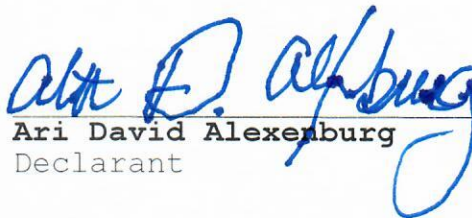
25 Debtor ARI DAVID ALEXENBURG acted with intent and malice
26 every moment he drove without a license, without skill
27 and knowledge of how to drive. For every second he was
on the road he was knowingly, willfully and intentionally
endangering other drivers on the road.

1 19. Paragraph 14 of Plaintiff Yadegar's Complaint, as
2 amended, asserts:

3 Additionally when Debtor ARI DAVID ALEXENBURG attempted
4 to leave the scene without giving his information or
5 admitting his actions he did so willfully and with the
6 intent to prevent Plaintiff/Creditor from collecting for
7 ARI DAVID ALEXENBURG's wrongdoing.

8 I declare under penalty of perjury that the foregoing
9 statements are true and correct and I could if called upon
10 competently testify thereto.

11 Executed this 3rd day of 10/2022 at Woodland Hills, California.

12 
13 Ari David Alexenburg
14 Declarant
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Exhibit

1

Eric Bryan Seuthe, Esq. (SBN 90269)
Terrence I. Swinson, Esq. (SBN 275744)
LAW OFFICES OF ERIC BRYAN SEUTHE & ASSOCIATES
445 South Beverly Drive, 2nd Floor
Beverly Hills, CA 90212
Telephone: (310) 277-8020

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DAPHNE YADEGAR,

Plaintiff,

vs.

ARI DAVID ALEXENBURG; ROCHELLE
H ALEXENBURG, and Does 1 through
25, inclusive,

Defendants,

CASE NO: 20STCV10613

COMPLAINT FOR DAMAGES

Motor Vehicle
Negligence

COMES NOW plaintiff DAPHNE YADEGAR, and for her cause(s) of action
against the defendants and each of them, alleges as follows:

FIRST CAUSE OF ACTION

(For Negligence by DAPHNE YADEGAR,

Against all Defendants, and Each of Them)

1. All the acts complained of herein occurred in the County of Los Angeles,
State of California.
2. That the true names and capacities, whether individual, corporate,

1 associate or otherwise of defendants, DOES 1 through 25, inclusive, are
2 unknown to plaintiff at this time, who therefore sues said defendants by
3 such fictitious names, and that when the true names and capacities of
4 said defendants are ascertained, plaintiff will amend this complaint
5 accordingly.

6 3. Plaintiff is informed and believes and thereon alleges that each of the
7 defendants designated herein as a DOE is responsible in some manner
8 for the events and happenings herein referred to and caused injury and
9 damages proximately thereby to plaintiff, as herein alleged.

10 4. Plaintiff, DAPHNE YADEGAR, is and at all times herein mentioned was a
11 resident of the County of Los Angeles, State of California.

12 5. Plaintiff is informed and believes and thereon alleges that defendants, ARI
13 DAVID ALEXENBURG and ROCHELLE H ALEXENBURG, is, and at all
14 times herein mentioned, was a resident of the County of Los Angeles,
15 State of California.

16 6. Plaintiff is informed and believes and thereon alleges that defendants,
17 DOES 1 through 25, inclusive, are, and at all times herein mentioned,
18 were residents of the County of Los Angeles, State of California.

19 7. That at all times herein mentioned, Northbound 405 Freeway 700 feet
20 north of Nordhoff Blvd is in the County of Los Angeles, State of
21 California.

22 8. That at all times herein mentioned, plaintiff DAPHNE YADEGAR was the
23 passenger of a 2006, Silver, BMW 5251, a motor vehicle which was
24 involved in the collision herein described.

25 9. Plaintiff is informed and believes that thereon alleges that defendant ARI
26 DAVID ALEXENBURG was the operator of the 2009, Silver, Toyota,
27 Camry, a motor vehicle, which was involved in the collision herein
28

described.

10. Plaintiff is informed and believes that thereon alleges that defendant ROCHELLE H ALEXENBURG was the owner of the 2009, Silver, Toyota, Camry, a motor vehicle, which was involved in the collision herein described.

11. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, defendants ARI DAVID ALEXENBURG and ROCHELLE H ALEXENBURG, and DOES 1 through 25, inclusive, and each of them, was the operator and the owners of the 2009, Silver, Toyota, Camry, a motor vehicle, which was involved in the collision herein described.

12. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, each defendant was the agent, servant and employee of the remaining co-defendants and was acting within the course and scope of such agency, service and employment, with the knowledge, consent, and permission of the remaining co-defendants.

13. That on or about February 28, 2020, at the aforementioned place, while plaintiff was driving within the aforementioned motor vehicle, the defendants, and each of them, so negligently, recklessly, carelessly, entrusted, managed, maintained, drove and operated said defendants' motor vehicle, so as to cause the same to strike and collide with the plaintiff's vehicle described herein above, thereby proximately causing the plaintiff to be severely injured as described hereinafter, and further proximately causing the plaintiff to sustain damages, as hereinafter described.

14. That as a proximate result of the negligence of the defendants, and each of them, and DOES 1 through 25, and each of them, as herein alleged,

1 the plaintiff has suffered special damages in an amount according to
2 proof.

3 15. That as a proximate and direct result of the negligence, recklessness and
4 carelessness of the defendants, and each of them, plaintiff has sustained,
5 and in the future is certain to sustain, disabling, serious and permanent
6 injuries, pain, suffering and mental anguish in connection therewith, all to
7 her general damages according to proof.

8 16. That as a further, direct and proximate result of the negligence,
9 recklessness and carelessness of the defendants, and each of them,
10 plaintiff has incurred and will in the future incur medical and sundry
11 expenses in the examination, care and treatment of her injuries, and
12 continuing to date, the exact nature and extent of which are unknown to
13 plaintiff at this time, and plaintiff will ask leave of court to amend this
14 complaint in this regard when the same are ascertained.

15 17. At the time of said injuries, plaintiff was employed in her usual occupation
16 and as a further proximate result of the negligence of the defendants and
17 each of them, and by reason of said injuries suffered by her, plaintiff was
18 unable to attend her usual occupation and thereby lost earnings and
19 earning capacity.

20 18. The full amount of such loss of earnings, past and future, is an amount
21 which is currently unknown to plaintiff, and plaintiff will amend this
22 complaint to state the full amount of such damages when it becomes
23 known to her, or upon proof thereof.

24
25 **WHEREFORE**, plaintiff prays for judgment against the defendants, and each of
26 them, as follows:

27 **ON ALL CAUSES OF ACTION**

1. For general damages in the amount according to proof;
2. For special damages for x-rays, medical and sundry expenses, according to proof;
3. For loss of earnings and earning capacity, according to proof;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court may deem just and proper.

Dated: March 17, 2020

LAW OFFICES OF ERIC BRYAN
SEUTHE & ASSOCIATES



By: _____
ERIC BRYAN SEUTHE
TERRENCE I. SWINSON
ATTORNEYS FOR PLAINTIFF

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

Law Offices Of Hagen & Hagen, 4559 San Blas Avenue, Woodland Hills, California 91364

A true and correct copy of the foregoing document entitled (*specify*): Motion By Defendant Ari David Alexenburg For Order Dismissing Complaint By Plaintiff Daphne Yadegar, Without Leave To Amend, For Failure To State A Claim For Relief Pursuant To Federal Rule Of Bankruptcy Procedure 7012(b)(6); Memorandum Of Points And Authorities; Declaration Of Defendant Ari David Alexenburg

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 10/03/2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 10/03/2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/03/2022 Jeffrey J Hagen
Date Printed Name

/s/ Jeffrey J Hagen
Signature

SECTION I - TO BE SERVED BY THE COURT VIA NEF

Chapter 7 Trustee:

Amy L Goldman (TR) marisol.jaramillo@lewisbrisbois.com
AGoldman@iq7technology.com;
ecf.alert+Goldman@titlexi.com

United States Trustee:

United States Trustee (SV) ustpreregion16.wh.ecf@usdoj.gov

Requests For Special Notice:

None

Requests For Courtesy Notification Of Electronic Filing:

Terrence Swinson terrenceswinson@gmail.com

SECTION II - SERVED BY UNITED STATES MAIL OR OVERNIGHT MAIL

Defendant:

Mr. Ari David Alexenburg
8114 Kentland Avenue
West Hills, California 91304